

State of Nevada  
Department of Administration  
Division of Internal Audits

**Audit Report**

**Department of Transportation**

Report No. 14-01  
September 2013

**EXECUTIVE SUMMARY**  
**Nevada Department of Transportation**

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**Objective 1: Can the Department Improve Its Process for Settling Employee Claims with Cash Awards?**

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**Establish written policies and procedures to ensure awards for employee settlements for \$100,000 and more are presented to the Board of Examiners for approval** .....page 6

The Department can improve its employee settlement process by establishing written policies and procedures to ensure cash awards for employee settlements are properly approved.

We reviewed the Department’s accounting records for employee settlements and identified seven employee claims settled with cash awards. One of the payments over the statutory limit of \$100,000 was made without obtaining the Board of Examiner’s approval as required by statute. Obtaining proper approval prior to settling employee claims for amounts over the statutory limit ensures compliance with statutes and regulations.

**Establish written policies and procedures to ensure that all employee settlements are paid using the appropriate fund**.....page 6

The Department can improve its process for settling employee claims by establishing written policies and procedures to ensure the use of properly authorized funds. The Nevada Revised Statute 41.037 requires these claims to be paid from the Fund for Insurance Premiums (Tort Fund).

We noted that some of the claims were paid using highway funds while others were paid using tort claims funds. Proper settlement of employee claims with cash awards using the appropriate funds ensures compliance with statutes and regulations.

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**Objective 2: Can the Department Improve Its Process for Handling Employee EEO Complaints?**

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**Coordinate with DHRM’s SH/DI Unit to develop an agreed upon policy detailing procedures for handling and reporting employee complaints**.....Page 8

The Department can improve its process for handling employee complaints by coordinating with the Division of Human Resource Management’s (DHRM) Sexual Harassment/Discrimination Investigation (SH/DI) Unit to develop an agreed upon policy detailing procedures for handling and reporting employee Equal Employment Opportunity (EEO) complaints.

We determined in the course of our audit that some of the Department's procedures for handling and reporting EEO complaints were not consistent with the Governor's Policy on Sexual Harassment and Discrimination.

Coordinating with SH/DI Unit will help the Department in reconciling their procedures with the requirements of the Governor's Policy.

**Develop written policies and procedures to codify the process.....Page 8**

Upon developing a policy regarding EEO complaints, the Department should develop written procedures codifying the process.

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Department of Transportation's Response and Implementation Plan

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## INTRODUCTION

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At the direction of the Executive Branch Audit Committee, we conducted an audit of the Nevada Department of Transportation's (Department) employee settlements.

### **Department's Role and Public Purpose**

The Nevada Department of Highways was established in 1917. In 1979, the Nevada Department of Highways became the Nevada Department of Transportation. The purpose of the Department is to maintain and administer the transportation system for Nevada. The Transportation Board (Board), comprised of the Governor, Lieutenant Governor, Attorney General, State Controller and three members appointed by the Governor, oversees the Department. The Board selects a licensed professional engineer to be the Director. This individual is responsible to and serves at the pleasure of the Board.

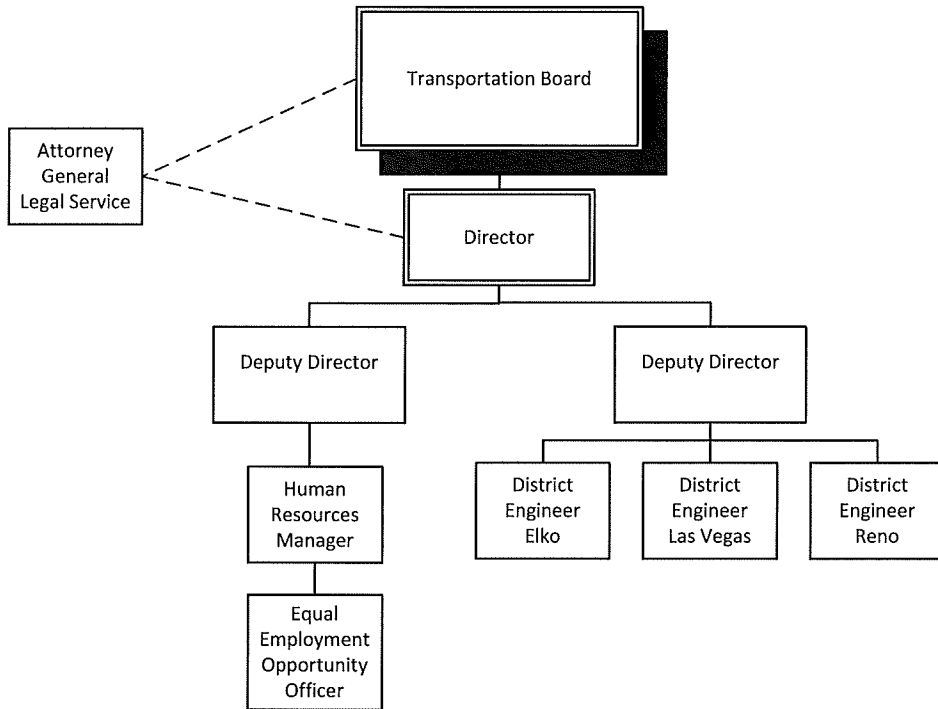
The Department maintains its principal offices in Carson City, Nevada. In addition, the Department has three districts: Elko, Las Vegas and Reno. Each district is responsible for the supervision of all State transportation activities within their district. The Department's Human Resources Manager and Equal Employment Opportunity Officer are located in Carson City and are responsible for managing employee complaints. See Exhibit I for the organizational chart relevant to this audit.

The Department's funding for fiscal year 2012 was approximately \$1 billion with 1,780 full time equivalent employees. The Department is funded as follows:

- Federal – Federal highway funds provide about 47 percent of the Department's funding to build and maintain highways in Nevada.
- State – State highway funds provide about 43 percent of the Department's funding with fees such as vehicle fuel taxes and registration fees.
- Other – Other funds provide about 10 percent of the Department's funding and include license plate fees, reimbursements, and car rental fees.

## Exhibit I

### Department Organizational Chart



### Scope and Objective

We began audit work in May 2012. In the course of our audit, we reviewed the Department's budget account records, settlement payment records, claims files, settlement documents, statutes, and regulations. We interviewed representatives from the Controller's Office, Attorney General's Office, Legislative Counsel Bureau, Department employees, and the State's Division of Human Resource Management. Additionally, we reviewed the Governor's policy on sexual harassment and discrimination, and meeting minutes from the Board of Examiners and the Transportation Board. We concluded field work and testing in March 2013.

Our audit focused on the following objectives:

- ✓ Can the Department improve its process for settling employee claims with cash awards?
- ✓ Can the Department improve its process for handling employee complaints?

We performed our audit in accordance with the *International Standards for the Professional Practice of Internal Auditing*.

The Division of Internal Audits expresses appreciation to the management and staff of the Department and the Attorney General's Office for their cooperation and assistance throughout the audit.

Contributors to this report included:

Vita Ozoude, CPA, CMA, CGMA, MBA  
Executive Branch Audit Manager

Lynnette Pagaling, CPA, MBA  
Executive Branch Auditor

Dennis Stoddard, MBA  
Executive Branch Auditor

## **Nevada Department of Transportation Response and Implementation Plan**

We provided draft copies of this report to Department officials for their review and comments. Their comments have been considered in the preparation of this report and are included in Appendix A. In its response, the Department accepted each of our audit recommendations. Appendix B includes a timetable to implement our recommendations.

NRS 353A.090 specifies that within six months after the Executive Branch Audit Committee releases the final audit report, the Administrator of the Division of Internal Audits shall evaluate the steps the Department has taken to implement the recommendations and shall determine whether the steps are achieving the desired results. The Administrator shall report the six-month follow-up results to the Committee and Department officials.

The following report contains our findings, conclusions, and recommendations.

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## Can the Department Improve Its Process for Settling Employee Claims with Cash Awards?

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The Nevada Department of Transportation (Department) can improve its employee settlement process by establishing policies and procedures to ensure cash awards paid to employees to settle claims are properly approved and paid using the appropriate funds. Proper settlement of employee claims with cash awards ensures compliance with statutes and regulations.

### Employee Settlement Awards

We reviewed the Department's accounting records for employee settlements and identified the following seven employee claims settled with cash awards (See Exhibit II for summary). We also reviewed these payments for proper compliance with statutes and regulations.

#### Exhibit II

#### Awards

| Year | Amount    | Award Source     |
|------|-----------|------------------|
| 2012 | \$501     | Tort Claims Fund |
| 2011 | \$1,000   | Tort Claims Fund |
| 2010 | \$10,000  | Highway Fund     |
| 2010 | \$22,500  | Highway Fund     |
| 2010 | \$150,000 | Highway Fund     |
| 2008 | \$25,000  | Highway Fund     |
| 2006 | \$130,000 | Tort Claims Fund |

Nevada Revised Statutes 41.035 and 41.036 and Nevada Administrative Code 41.130 stipulate the requirements for approving tort claims against the State. The requirements are clarified further in the State Administrative Manual section 2905. Based on these guidelines, the Attorney General can pay awards under \$100,000. Payments of \$100,000 and more must be presented to the Board of Examiners for approval. The payment for \$150,000 was not presented to the Board of Examiners for approval. This payment was subsequently disclosed to the Board of Examiners at their meeting held on May 10, 2011.

Additionally, Nevada Revised Statute 41.037 requires these claims to be paid from the Fund for Insurance Premiums (Tort Fund). As shown above, four of these awards were paid using the Highway Fund.

Discussions with the Department and the Attorney General's Office disclosed that the two agencies are working together to ensure that future claims are paid



using the appropriate fund. In addition, in July 2011, the Department's Transportation Board agreed to adopt a policy requiring all claims over the statutory amount to be forwarded to the Board of Examiners for approval. The Department should codify the Transportation Board's decision with written policies and procedures.

### **Recommendations**

1. Establish written policies and procedures to ensure awards for employee settlements for \$100,000 or more are presented to the Board of Examiners for approval.
2. Establish written policies and procedures to ensure that all employee settlements are paid using the appropriate fund.

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## **Can the Department Improve Its Process for Handling Employee EEO Complaints?**

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The Department can improve its process for handling employee complaints by coordinating with the Division of Human Resource Management's (DHRM) Sexual Harassment/Discrimination Investigation (SH/DI) Unit to develop agreed upon policy detailing procedures to be used for handling and reporting employee complaints. This will assist the Department in reconciling their procedures with the requirements of the Governor's Policy on Sexual Harassment and Discrimination (Governor's Policy).

### **Employee Complaint Process**

The Department is required to maintain an internal Equal Employment Opportunity (EEO) program and an EEO Officer on staff pursuant to the Federal Highway Administration's (FHWA) Title 23 Code of Federal Regulations. The FHWA requires state highway agencies to adopt policies to ensure equal employment opportunities for all employees, contractors and subcontractors regardless of race, color, religion, sex, or national origin. One of the responsibilities of the EEO Officer is handling and processing discrimination complaints from within and outside the Department. Employees can report complaints outside the Department by contacting DHRM, Nevada Equal Rights Commission, Equal Employment Opportunity Commission, and/or seeking redress through the courts.

The Governor's Policy requires department directors to promptly notify the agency's Deputy Attorney General and DHRM's SH/DI Unit upon receiving notification of an employee complaint. The SH/DI Unit is required to investigate harassment and discrimination complaints made by employees.

We reviewed complaint files, correspondence between the Department and DHRM and discussed the Governor's Policy with staff. We noted the Department handles all EEO complaints in-house, which is inconsistent with the Governor's Policy. The Department provided a March 2004 letter to the Director of the Department of Personnel<sup>1</sup> which indicates FHWA regulations require them to handle EEO complaints at the lowest possible level. We were unable to determine if a response to the 2004 letter was ever sent to the Department.

We contacted DHRM who informed us that the Department is authorized to handle EEO complaints in-house and resolve these cases at the lowest possible level. However, if the employee chooses, the SH/DI Unit will conduct the investigation.

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<sup>1</sup> The Department of Personnel became the Division of Human Resource Management under the Department of Administration in 2011.

Additionally, the Policy requires department directors to inform the SH/DI Unit when an employee files a complaint, as well as when the complaints are closed out. For the period 2009 through 2011, we noted that less than 5 percent of the complaints received by the Department were reported to the SH/DI Unit. See Exhibit III.

### Exhibit III

#### EEO Complaints

| Fiscal Year  | Number of Complaints Received by the Department | Number of Complaints Department Reported to SH/DI Unit | Percent of Complaints Reported to SH/DI |
|--------------|---|--|---|
| 2009         | 35  | 2  | 5.7%                                    |
| 2010         | 34  | 3  | 8.8%                                    |
| 2011         | 39  | 0  | 0.0%                                    |
| <b>Total</b> | <b>108</b>                                      | <b>5</b>   | <b>4.6%</b>                             |

Complaints received by the Department include both formal and informal complaints. Formal complaints involve extensive investigations, while informal complaints are resolved with discussion and/or minimal investigations.

The Department represented they desire formal guidance from DHRM's SH/DI Unit regarding their handling of EEO complaints including whether both formal and informal complaints should be reported.

The Department should coordinate with DHRM's SH/DI Unit to develop an agreed upon policy detailing procedures for handling and reporting EEO complaints. The Department should then develop written policies and procedures to codify the process.

#### Recommendations:

3. Coordinate with DHRM's SH/DI Unit to develop an agreed upon policy detailing procedures for handling and reporting EEO complaints.
4. Develop written policies and procedures to codify the process.

# Appendix A

## Department's Response

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BRIAN SANDOVAL  
Governor

STATE OF NEVADA  
DEPARTMENT OF TRANSPORTATION  
1263 S. Stewart Street  
Carson City, Nevada 89712

RUDY MALFABON, P.E., *Director*

In Reply Refer to:

July 3, 2013

State of Nevada Department of Administration  
Internal Audits Division  
Attn: Mr. Steve Weinberger, CPA  
208 East Musser St., Room 302  
Carson City, NV 89701

Audit on Employee Settlements

Dear Mr. Weinberger:

Pursuant to NRS 353A, this is the Nevada Department of Transportation (NDOT) response to the recent Executive Branch Audit on employee settlements. NDOT's response is provided for each recommendation below:

- 1. Establish written policies and procedures to ensure awards for employee settlements for \$100,000 or more are presented to the Board of Examiners for approval.**

NDOT accepts this recommendation. NDOT previously changed our Coding Manual Chart of Accounts to require Board of Examiners approval for employee settlements for \$100,000 or more. By December 31, 2013, written policies and procedures will be established in the NDOT Accounting Procedures Manual to enact this recommendation.

- 2. Establish written policies and procedures to ensure that all employee settlements are paid using the appropriate fund.**

NDOT accepts this recommendation. In consultation with the Chief Deputy Attorney General assigned to NDOT, a determination will be made by the Director as to the appropriate fund to pay employee settlements. In some cases, the State Highway Fund may be the appropriate fund for all or a portion of an employee settlement. For instance, for repayment of previously withheld wages or payment for the premium portion of overtime previously not granted to the employee, it would be appropriate to pay from the State Highway Fund, not the Tort Claim Fund. By December 31, 2013, written policies and procedures will be established in the NDOT Accounting Procedures Manual to enact this recommendation.

**3. Coordinate with DHRM's SH/DI Unit to develop an agreed upon policy detailing procedures for handling and reporting EEO complaints.**

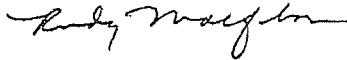
NDOT accepts this recommendation. By December 31, 2013, this policy will be enacted to ensure coordination with DHRM's SH/DI Unit in cases which have been investigated by NDOT (per agreement with DHRM) and confirmed to involve sexual harassment and/or discrimination.

**4. Develop written policies and procedures to codify the policy.**

NDOT accepts this recommendation. By December 31, 2013, NDOT will modify , Transportation Policy 1-4-3, Discrimination Complaint Procedure, and, if necessary, Transportation Policy 1-4-2, Sexual Harassment, to codify the policy and procedure to ensure coordination with DHRM's SH/DI Unit.

We appreciate the efforts of the auditors involved in this audit and look forward to enacting these recommendations with the goal of improving the employee settlement process.

Sincerely,



Rudy Malfabon, P.E.  
Director  
Nevada Department of Transportation

cc: Bill Hoffman, Deputy Director, NDOT  
Kimberley King, Human Resources Manager, NDOT  
Dave Olsen, Chief, Accounting Division, NDOT  
Dennis Gallagher, Chief Deputy Attorney General

## Appendix B

### Timetable for Implementing Audit Recommendations

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In consultation with the Department, the Division of Internal Audits categorized the four recommendations contained within this report as taking less than six months to implement. The Department should begin taking steps to implement all recommendations as soon as possible. The Department's target completion dates are incorporated from Appendix A.

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#### Recommendations with an anticipated implementation period of less than six months.

| <u>Recommendations</u>  | <u>Time Frame</u> |
|---|-------------------|
| 1. Establish written policies and procedures to ensure awards for employee settlements for \$100,000 or more are presented to the Board of Examiners for approval. (page 6) | Dec 2013          |
| 2. Establish written policies and procedures to ensure that all employee settlements are paid using the appropriate fund. (page 6)  | Dec 2013          |
| 3. Coordinate with DHRM's SH/DI Unit to develop an agreed upon policy detailing procedures for handling and reporting EEO complaints. (page 8)                              | Dec 2013          |
| 4. Develop written policies and procedures to codify the policy. (page 8)   | Dec 2013          |



The Division of Internal Audits shall evaluate the action taken by the Department concerning report recommendations within six months from the issuance of this report. The Division of Internal Audits must report the results of its evaluation to the Committee and the Department.